

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT LEE GIBSON,

Defendant.

Case No. 2:16-cr-333-JAD-VCF

**REPORT AND RECOMMENDATION**

Before the court are Gibson's motion to suppress (ECF No. 15), the Government's response (ECF No. 23), and Gibson's reply (ECF No. 30). The court also considered Gibson's supplement (ECF No. 38) and the Government's supplement (ECF No. 39). For the reasons stated below, Gibson's motion should be granted.

**I. Background**

On October 29, 2016, Las Vegas Metropolitan Police (Metro) Officers Orton and Dannenberger stopped a green Ford F-150 with Wyoming license plates. (ECF No. 25) Officer Dannenberger was wearing a body camera, which recorded the most of the encounter.<sup>1</sup> Officer Dannenberger ran the truck's license plate number through their patrol car's mobile data terminal.<sup>2</sup> The system checked the license plate number against Wyoming Department of Motor Vehicles. According to the system, the license plate was expired and was registered to a Honda Accord. Officer Orton testified that in addition to the expired plates, she suspected that the license plates or the truck may have been stolen.

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<sup>1</sup> Officer Dannenberger testified that he switched his camera on and off multiple times during the encounter. This left the parties and the court with a series of video clips that depict certain portions of the encounter.

<sup>2</sup> A mobile data terminal is an onboard computer located in Metro patrol vehicles. It allows officers to verify information, conduct background checks, and complete other investigatory tasks in the field.

1 Unknown to the officers at the time, the Wyoming Department of Motor Vehicles maintains a  
2 separate data base for trucks. Wyoming truck license plate numbers must be entered into the system in a  
3 different manner than other Wyoming plate numbers in order to return accurate information. Officer  
4 Dannenberger entered the F-150's license number in the standard fashion, which is why the plate was  
5 shown as expired and registered to a Honda Accord. Later on in the encounter, Metro dispatch ran the  
6 plate number correctly. This showed that the registration was current and that the number was  
7 associated with an F-150 truck.

8 Officer Orton approached the driver, Joyce Frazier. Frazier could not locate her proof of  
9 insurance or registration for the truck. Officer Orton instructed Frazier to wave her paperwork outside  
10 the driver's side window, if she located it.

11 Officer Dannenberger approached the passenger, Defendant Robert Lee Gibson. (ECF No. 25)  
12 Officer Dannenberger asked Gibson for identification, about his criminal history, and if there was a  
13 firearm in the car. (*Id.*) Gibson provided a voided Nevada driver's license as well as his social security  
14 card. (*Id.*) Gibson also informed the officer that he was on federal probation. (*Id.*)

15 Officer Orton performed a records check on Frazier and Gibson. Officer Dannenberger stood  
16 several feet away from the patrol car facing the truck. (*Id.*) While the records check was being  
17 conducted, Frazier opened the driver side door and waved a piece of paper at the officers. (*Id.*) Officer  
18 Orton warned Frazier not to exit the vehicle. (*Id.*) Approximately three minutes elapsed between  
19 Officer Orton beginning her records check and Frazier being ordered to remain in the truck. (*Id.*)

20 Frazier ignored Officer Orton's instructions and exited the truck. (*Id.*) Gibson immediately  
21 moved into the driver's seat, put the truck in reverse, and revved the engine. (*Id.*) Officer Dannenberger  
22 ran to the passenger side window, drew his weapon, and ordered Gibson to place his hands on the dash.  
23 (*Id.*) Gibson was then ordered out of the vehicle and placed under arrest. (*Id.*)  
24  
25

1        Shortly thereafter, Metro Officers Lane and Randall arrived on scene to assist Officers Orton and  
2        Dannenberger. After assistance arrived, Officer Dannenberger decided to impound the truck and to  
3        conduct an inventory search. While Gibson was handcuffed in the back of a patrol car, Officer Lane  
4        asked Gibson a series of questions. Officer Lane characterized Gibson's responses as evasive and non-  
5        responsive. The last question was, "Is there anything in the truck we should know about?" Gibson did  
6        not respond to the question. Instead he looked away from Officer Lane and towards the F-150. When  
7        he saw Officers Dannenberger and Randall approaching the truck to begin their inventory search, he  
8        blurted out, "Everything in the truck is mine."

9        Officer Lane did not Mirandize Gibson before this exchange and he did not ask any other officer  
10       if he or she had Mirandized Gibson.

11       Officers Dannenberger and Randall conducted an inventory search of the truck. Officer Randall  
12       searched the driver's area, while Officer Dannenberger searched the passenger's area. The officers first  
13       searched the front cab area. Officer Randall removed the truck's fuse box, while Officer Dannenberger  
14       looked through the glove compartment. Eventually, Officer Dannenberger removed the glove compartment  
15       from the dashboard in order to search the cavity behind it.  
16

17       The officers moved from the front cab area to the rear cab area. Officer Dannenberger performed a  
18       cursory search of some clothing hanging on the rear cab door, then moved on to search an open tool bag.  
19       At the bottom of the bag, Officer Dannenberger discovered a zip lock bag containing .50 caliber  
20       handgun ammunition. Meanwhile, Officer Randall discovered a .50 caliber handgun in a holster under  
21       the driver's seat.

22       Once Officer Randall discovered the handgun, the officers stopped the inventory search and  
23       called detectives from Metro's firearm team. At no time during the search did either officer write down  
24       the items they discovered. The officers did not relay the information to another officer to write down,  
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nor did they use their body cameras to make an audio-visual record of the items they discovered.

Officer Randall testified that it was his practice to simply memorize the items he found during inventory searches and record them on Metro's impound sheet at a later time. Officer Lane began to complete an impound sheet, but stopped once the handgun was discovered. According to Officer Lane, this sheet only documented items found in the truck bed. The incomplete sheet was later destroyed.

A records check on the handgun revealed that it was stolen. Based on Gibson's statements, officers charged him with possession of a stolen handgun.

On November 15, 2016, Gibson was indicted on one count of being a felon in possession of a firearm. (ECF No. 1)

## II. Discussion

### 1. Metro Officers May Have Had Reasonable Suspicion to Stop the F-150

"For the duration of a traffic stop, ... a police officer effectively seizes everyone in the vehicle, the driver and all passengers." *Arizona v. Johnson*, 555 U.S. 323, 327, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009).

"A police officer needs only reasonable suspicion in the context of investigative traffic stops." *United States v. Miguel*, 368 F.3d 1150, 1153 (9th Cir. 2004). "Reasonable suspicion is formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity." *United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000).

The Ninth Circuit has "distinguished between mistakes of fact and mistakes of law when an officer has initiated a traffic stop based on a mistaken belief." *Miguel*, 368 F.3d at 1153. "[I]f an officer makes a traffic stop based on a mistake of law, the stop violates the Fourth Amendment." *United States v. Twilley*, 222 F.3d 1092, 1096 (9th Cir. 2000). "A mere mistake of fact will not render a stop illegal, if

1 the objective facts known to the officer gave rise to a reasonable suspicion that criminal activity was  
2 afoot.” *United States v. Mariscal*, 285 F.3d 1127, 1131 (9th Cir. 2002). “[A]n officer’s correct  
3 understanding of the law, together with a good-faith error regarding the facts, can establish reasonable  
4 suspicion.” *United States v. King*, 244 F.3d 736, 739 (9th Cir. 2001).

5 In *Miguel*, police officers’ mistaken belief that a vehicle’s registration was expired supported  
6 reasonable suspicion. 368 F.3d at 1154. Officers had stopped the defendant’s vehicle for expired  
7 registration. *Id.* In coming to this conclusion, the officer relied on exclusively on information provided  
8 to them by their law enforcement computer. *Id.* The computer checked the license plate against  
9 Department of Motor Vehicle records. *Id.* These records indicated that the defendant’s vehicle  
10 registration was expired. *Id.* In reality, the defendant had renewed his registration the week before, but  
11 the department’s records had not updated to reflect the renewal. *Id.*

12 The Ninth Circuit held that the officers reasonably and in good faith relied on the information  
13 from the department. *Id.* Whether a vehicle’s registration was expired was a question of fact and the  
14 officers’ reasonable, good-faith mistake as to this fact did not eviscerate reasonable suspicion. *Id.*

15 Here, Metro officers had reasonable suspicion to stop the F-150. Based on information from  
16 their mobile data terminal, they believed that the truck had expired license plates and that the plates, or  
17 the truck, was possibly stolen. Although this information was later proved to be incorrect, the officers  
18 were entitled to rely on this information when forming the basis for reasonable suspicion. *See id.* Like  
19 in *Miguel*, the officers’ mistake regarding the validity of the truck’s license plate was a mistake of fact,  
20 not one of law. *Id.* The officer knew that driving a motor vehicle without current registration was a  
21 crime in the state of Nevada. NRS 482.545. This belief was sufficient basis to conduct a traffic stop.  
22 *Miguel*, 368 F.3d at 1154.  
23  
24  
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1 The court is also convinced that Officer Orton's belief was formed in good faith and was  
 2 reasonable. At the time of stop, Officer Orton had been a Metro officer for approximately one year and  
 3 was still being overseen by more experienced officers, in this instance by Officer Dannenberger. Officer  
 4 Orton credibly testified that this stop was her first encounter with a Wyoming license plate and she was  
 5 not aware of the correct procedure for running a Wyoming truck plate. Indeed, Officer Orton required  
 6 the assistance of a Metro dispatcher to properly run the F-150's license plate number. Based on these  
 7 facts, the officers had reasonable suspicion to conduct a traffic stop.

8 2. Officers Did Not Unreasonably Prolong the Traffic Stop

9 Gibson argues that the traffic stop amounted to an unreasonable seizure because Metro officers  
 10 took no actions to determine if the F-150's license plates were expired. (ECF No. 15) Gibson cites two  
 11 lines of inquiry that allegedly prolonged the stop: questions about his criminal history and notification  
 12 that providing false information to police was a felony. (ECF No. 30) He argues that these questions  
 13 were wholly unrelated to the purpose of the stop and served to unreasonably prolong it while the officers  
 14 conducted an investigation into general criminal wrongdoing. (*Id.*)

15  
 16 “[A] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of  
 17 execution unreasonably infringes interests protected by the Constitution.” *Illinois v. Caballes*, 543 U.S.  
 18 405, 407, 125 S.Ct. 834, 837, 160 L.Ed.2d 842 (2005). “A seizure that is justified by the interest in  
 19 issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably  
 20 required to complete that mission.” *Id.*

21 “Because addressing the infraction is the purpose of the stop, it may last no longer than is  
 22 necessary to effectuate th[at] purpose.” *Rodriguez v. United States*, — U.S. —, 135 S.Ct. 1609, 191  
 23 L.Ed.2d 492 (2015)(internal quotations omitted). “Authority for the seizure thus ends when tasks tied to  
 24 the traffic infraction are—or reasonably should have been—completed.” *Id.*  
 25

1 “Beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary  
2 inquiries incident to [the traffic] stop.” *Id.* (internal quotations omitted). “Typically such inquiries  
3 involve checking the driver’s license, determining whether there are outstanding warrants against the  
4 driver, and inspecting the automobile’s registration and proof of insurance.” *Rodriguez*, 135 S.Ct. at  
5 1609.

6 “Normally, the stop ends when the police have no further need to control the scene, and inform  
7 the driver and passengers they are free to leave.” *Johnson*, 555 U.S. at 327, 129 S.Ct. 781. “An  
8 officer’s inquiries into matters unrelated to the justification for the traffic stop ... do not convert the  
9 encounter into something other than a lawful seizure, so long as those inquiries do not measurably  
10 extend the duration of the stop.” *Id.* “The critical question, then, is not whether the [additional inquiry]  
11 occurs before or after the officer issues a ticket, ... but whether [the inquiry] ‘prolongs’ —i.e. adds time  
12 to— ‘the stop.’” *Rodriguez*, 135 S.Ct. at 1616; *see also Caballes*, 543 U.S. at 409, 125 S.Ct. 834.

13  
14 Approximately 7 minutes elapsed between the beginning of the traffic stop and Gibson’s escape  
15 attempt. (ECF No. 25) Officer Orton had only been performing record checks for approximately 3  
16 minutes before Puckett tried to leave the truck. In the 3 minutes Officer Orton spent running records  
17 checks, she had not decided how to conclude the traffic stop. *Johnson*, 555 U.S. at 327, 129 S.Ct. 781.  
18 Without this clearly defined end to the traffic stop, or evidence showing when the stop should have  
19 ended, the court concludes that the officers did not unreasonably prolonged the stop. *Rodriguez*, 135  
20 S.Ct. at 1616. This is true even if the additional inquiries were wholly unrelated to the original purpose  
21 of the stop. *Johnson*, 555 U.S. at 327, 129 S.Ct. 781.

22 /// /// ///

1       3.       Gibson Has Standing to Challenge the Search of the Vehicle<sup>3</sup>

2               Gibson argues that the search of the truck violated his Fourth Amendment rights. (ECF No. 15)  
 3       The Government contends that Gibson was merely a passenger and thus lacks standing to challenge the  
 4       vehicle search. (ECF No. 23)

5               In the context of the Fourth Amendment, “standing” refers to an individual’s ability to contest  
 6       the validity of a search. *Twilley*, 222 F.3d at 1095. In order to have standing to challenge a search, “the  
 7       defendant must establish that he or she had a legitimate expectation of privacy in the place searched or  
 8       the property seized.” *United States v. Kovac*, 795 F.2d 1509, 1510 (9th Cir. 1986)(internal quotations  
 9       omitted). “Because Fourth Amendment rights are personal and may not be vicariously asserted, as a  
 10       general rule, only the owner of the vehicle or an individual with a legitimate privacy interest in the  
 11       vehicle may challenge an allegedly illegal search.” *United States v. Wanless*, 882 F.2d 1459, 1462 (9th  
 12       Cir. 1989).

13               “A reasonable expectation of privacy may be shown ‘either by reference to concepts of real or  
 14       personal property law or to understanding that are recognized and permitted by society.” *United States*  
 15       *v. Thomas*, 447 F.3d 1191, 1197 (9th Cir. 2006)(quoting *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S.Ct.  
 16       469, 142 L.Ed.2d 373 (1998)). “Therefore, a defendant who lacks an ownership interest may still have  
 17       standing to challenge a search, upon a showing of ‘joint control’ or ‘common authority’ over the  
 18       property searched.” *Id.* “Common authority rests ‘on mutual use of the property by persons generally  
 19       having joint access or control for most purposes.’” *Id.* (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 181,  
 20       110 S.Ct. 2793, 111 L.Ed.2d 148 (1990)).  
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24       <sup>3</sup> Gibson also argues that his statement, “Everything in the car is mine,” demonstrated that he had a legitimate expectation of  
 25       privacy in the truck. (ECF No. 15) However, “the mere fact that [the defendant] ‘claimed ownership’ of the gun does not  
 confer standing upon him to seeks its suppression.” *United States v. Pulliam*, 405 F.3d 782, 786 (9th Cir. 2005).

1 There is no dispute that Gibson was not the owner or the initial driver of the truck. Ordinarily,  
2 these facts would deprive him of standing to challenge the search of the truck. *Twilley*, 222 F.3d at 1095  
3 (“As a passenger, Twilley has no reasonable expectation of privacy in a car that would permit [his]  
4 Fourth Amendment challenge to a search of the car.”)

5 The facts of this case, however, present an unusual standing question. At the evidentiary  
6 hearing, Frazier credibly testified to the following facts: 1) she had known Gibson for about two weeks  
7 prior to the traffic stop; 2) Gibson was a friend of her brother, Donald Puckett; 3) she allowed Gibson to  
8 use her truck on the condition that he drive her to work every day; 4) apart from giving Frazier rides to  
9 and from work, Gibson had unrestricted use of the truck; and 5) Gibson used the truck to collect and  
10 store his belongings.

11 Based on these uncontested facts, the court finds that Gibson had a reasonable expectation of  
12 privacy in the truck. *United States v. Johns*, 851 F.2d 1131, 1136 (9th Cir. 1988) (holding that  
13 individual who kept belongings in a storage unit and paid a portion of the rent had standing to challenge  
14 the search of the unit despite not being on the lease agreement). Gibson’s arrangement with Frazier  
15 demonstrates that the two had “joint control” over the F-150. While he was using the truck, Gibson  
16 could exclude all others except Frazier from it. *Thomas*, 447 F.3d at 1199. And like the defendant in  
17 *Johns*, Gibson kept his personal property in the truck and had an arrangement with Frazier that allowed  
18 him unrestricted use of the truck. 851 F.2d at 1136.

19  
20 4. The Inventory Search Was Invalid

21 “The impoundment of an automobile is a seizure within the meaning of the Fourth Amendment.”  
22 *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005). “Under the ‘community caretaking’  
23 doctrine police may, without a warrant, impound and search a motor vehicle so long as they do so in  
24 conformance with the standardized procedures of the local police department and in furtherance of a  
25

1 community caretaking purpose, such as promoting public safety or the efficient flow of traffic.” *United*  
2 *States v. Torres*, 828 F.3d 1113, 1118 (9th Cir. 2016).

3 Gibson argues that the Metro officers’ decision to impound the F-150 was not in compliance  
4 with Metro guidelines. Metro guideline 5/204.06 provides 12 circumstances under which a vehicle may  
5 be impounded. (ECF No. 31-2) At the evidentiary hearing, Metro officers testified that they relied on  
6 circumstance number 12 to impound the truck. Circumstance 12 states that a vehicle may be impounded  
7 “[i]f there is not a licensed driver in the vehicle and it is not legally parked.” (*Id.* at 3) It is uncontested  
8 that neither Frazier nor Gibson could have legally moved the truck: Frazier was arrested on an  
9 outstanding warrant and Gibson did not have a valid driver’s license. Based on the body camera video  
10 and the officers’ testimony, the F-150 was parked illegally. Although it was parked off to the side of an  
11 access road, it was still obstructing the travel lane. An inattentive motorist could have easily hit the  
12 truck while turning on to the access road. The court concludes that the officers complied with Metro  
13 policy when they decided to impound the truck.

14  
15 “Once a vehicle has been legally impounded, the police may conduct an inventory search  
16 without a warrant.” *Torres*, 828 F.3d at 1120. “[I]n order to ensure that the inventory search is ‘limited  
17 in scope to the extent necessary to carry out the caretaking function,’ it must be carried out in  
18 accordance with standard procedures of the local police department.” *Wanless*, 882 F.2d at 1463  
19 (quoting *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976)).

20 “When vehicles are impounded, local police departments generally follow a routine practice of  
21 securing and inventorying the automobiles’ contents.” *Opperman*, 428 U.S. 364, 96 S.Ct. 3092. “These  
22 procedures developed in response to three distinct needs: [1] the protection of the owner’s property  
23 while it remains in police custody; [2] the protection of the police against claims or disputes over lost or  
24 stolen property; and [3] the protection of the police from potential danger.” *Id.*

1 In *Wanless*, the Ninth Circuit held that an inventory search was invalid because police officers  
2 failed to comply with state law. 882 F.2d at 1464. Under Washington state law, police officers were  
3 required to ask the owner of a vehicle if he consented to an inventory search. *Id.* at 1463. The officers  
4 did not ask the vehicle's owner whether he consented to the inventory search. *Id.* This departure from  
5 state law proved pivotal. *Id.* Since the officers did not comply with state law regarding the consent  
6 inquiry, the resulting inventory search was unlawful. *Id.*

7 Metro policy mandates that "[i]mpounding officers must thoroughly search vehicles and  
8 containers located [in the vehicle] per 5/200/04. Personal property must be inventoried on the Vehicle  
9 Impound Report." (ECF No. 31-2)

10 Officers Randall and Dannenberger conducted an inventory search of the truck. Officer  
11 Dannenberger's body camera recorded the search. Both officers are observed opening various  
12 compartments in the front cab, then proceeding to look through various containers in the rear cab.  
13 Shortly after beginning his search of the rear cab, Officer Randall discovered a handgun under the  
14 driver's seat. The officers immediately stopped their inventory search and contacted Metro detectives.  
15 For the purposes of this motion, it is crucial to emphasize the manner in which the officers conducted  
16 their search.

17 The images and audio on the body camera (Def's Ex. C) are consistent with a general  
18 exploratory search, where minimal efforts were made to document areas searched or items discovered.  
19 The search departed significantly from Metro's written policy. At no time did either officer document  
20 on Metro's Vehicle Impound Report form, which areas were checked or what personal property, if any,  
21 was found. At the evidentiary hearing, both officers testified that they did not complete the form as the  
22 conducted their search, write down their findings in a notebook, or otherwise memorialize the results of  
23 the search. Officer Randall testified that it was his customary practice to remember what items he had  
24  
25

1 found then complete the impound report later. Officer Lane did begin to complete an impound form, but  
2 was only able to document the contents of the truck's bed before the handgun was discovered.

3 The court finds that the officers' conduct was a significant departure from Metro's written  
4 policy. Section VII.B.7 of Metro's policy states "[i]n an inventory, all containers and their contents  
5 within a vehicle must be documented for the above-stated policy reasons." (Def's Ex. B) The sentence  
6 immediately preceding this command states in part, inventory searches "must be done pursuant to  
7 standardized criteria which limits the discretion of the officer and ensures that impound/inventory are  
8 legally performed and not a guise for a general exploratory search." (*Id.*) Here, the officers' departure  
9 from official policy coupled with the manner in which the search was conducted amounts to a general  
10 exploratory search, not a valid inventory search. *See Wanless*, 882 F.2d at 1464 (holding that police  
11 officers' failure to comply with state law regarding consent to search rendered an inventory search  
12 unlawful). All evidence obtained as a result of the inventory search should be suppressed.

13  
14 5. Metro Officers Violated Gibson's *Miranda* Rights

15 The Fifth Amendment guarantees no person "shall be compelled in any criminal case to be a  
16 witness against himself." U.S. CONST. amend V. From this guarantee, courts derived the *Miranda*  
17 rule, which states that "the prosecution may not use statements ... stemming from custodial  
18 interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure  
19 the privilege against self-incrimination." *Miranda v. Arizona*, 384 U.S. 446, 444, 86 S.Ct. 1602 (1966).  
20 The *Miranda* decision also "established certain procedural safeguards that require police to advise  
21 criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing  
22 custodial interrogation." *Duckworth v. Eagan*, 492 U.S. 195, 202, 109 S.Ct. 2875, 106 L.Ed.2d 166  
23 (1984).  
24  
25

1 “In now-familiar words, the Court said that the suspect must be told that ‘he has [1] the right to  
2 remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right  
3 to the presence of an attorney, and [4] that if he cannot afford an attorney one will be appointed for him  
4 prior to any questioning if he so desires.” *Id.* at 201-02 (1989).

5 Law enforcement officers are required to give *Miranda* warning only when the defendant is: (1)  
6 in custody and (2) subject to an interrogation. *Rhode Island v. Innis*, 446 U.S. 291, 300, 100 S.Ct. 1682,  
7 64 L.Ed.2d 297 (1980).

8 a. *Custody*

9 The Government does not dispute that Gibson was in custody at the time of the challenged  
10 questioning. (ECF No. 23) The only question remaining is whether the officer’s statement constituted  
11 an interrogation. *Id.*

12 b. *Interrogation*

13 An interrogation can be either “express questioning or its functional equivalent.” *Innis*, 446 U.S.  
14 at 300-01. It “refers not only to express questioning, but also to any words or actions on the part of the  
15 police (other than those normally attendant to arrest and custody) that the police should know are  
16 reasonably likely to elicit an incriminating response.” *Id.* at 301. The Government argues that the  
17 question, “is there anything else in the vehicle that officers should know about?,” did not constitute an  
18 interrogation. (ECF No. 23) The court disagrees. The officers question is the type of express  
19 questioning that *Miranda* was designed to protect against. *See Innis*, 446 U.S. at 301.  
20

21 c. *Public-Safety Exception*

22 “In determining whether the public safety exception to *Miranda* applies, ‘[courts] ask whether  
23 there was an objectively reasonable need to protect the police or the public from any immediate  
24 danger.’” *United States v. Carrillo*, 16 F.3d 1046, 1049 (9th Cir. 1994)(internal citations omitted).  
25

1 In *New York v. Quarles*, a police officer arrested a rape suspect in a supermarket. 467 U.S. 649,  
2 651, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984). While conducting a pat down search, the officer  
3 discovered the defendant was wearing an empty shoulder holster. *Id.* at 652. Without *Mirandizing* him,  
4 the officer asked the defendant where the gun was. *Id.* The defendant directed the officer to nearby  
5 location and said, “the gun is over there.” *Id.* The defendant challenged the admission of his statements  
6 on the ground that it violated his *Miranda* rights. *Id.* at 653. The Supreme Court disagreed, and in so  
7 doing created the “public safety” exception to the *Miranda* rule. *Id.* at 655. So long as officers had an  
8 objectively reasonable belief that there was an immediate danger to himself or the public, they do not  
9 need to provide *Miranda* warnings before asking questions that could lead to incriminating responses.  
10 *Id.* In *Quarles*, the officer had an objectively reasonable belief that such a danger existed. *Id.* The  
11 defendant’s empty shoulder holster meant that a loaded firearm was somewhere in the grocery store. It  
12 would have been easy for an accomplice or member of the public to find and use the gun. *Id.*

13  
14 In *Carrillo*, a police officer asked the defendant if he had any drugs or needles on his person  
15 before conducting a pat down search at the local jail. *Id.* The defendant responded, “No, I don’t use  
16 drugs, I sell them.” *Id.* The district court admitted the statement over the defendant’s objections. *Id.*  
17 On appeal, the Ninth Circuit held that the officer’s question was based on a reasonable concern for his  
18 safety. *Id.* The officer had credibly testified that in the past, he had been poked by needles and his bare  
19 skin had come into contact with illicit drugs while searching suspects. *Id.* The officer was thus justified  
20 to ask his question out of concern for his own safety.

21 In *United States v. Brady*, a police officer arrested a kidnapping suspect in the middle of high-  
22 crime neighborhood. 819 F.2d 884, 885 (9th Cir. 1987). A large crowd had gathered and the officer  
23 believed a member of the crowd was armed with a knife. *Id.* During the arrest, the officer asked the  
24 defendant if he had gun in his car. *Id.* The defendant replied that there was a gun in the trunk. *Id.* At  
25

1 trial, the defendant's statements about the gun's location were admitted over his objections. *Id.* at 888.  
2 On appeal, the Ninth Circuit held that the statements fell within the public safety exception to *Miranda*.  
3 The officer was confronted with a gathering crowd in a high-crime area, some of whom he suspected  
4 were armed. *Id.* These circumstances made it reasonable for the officer to conclude there was an  
5 immediate danger to himself and bystanders. *Id.*

6 Here, Metro officers did not have an objectively reasonable belief that there was an immediate  
7 danger to themselves or the public. First, there was no threat of a third party finding and using the  
8 weapon. No crowd had gathered, *Brady*, 819 F.2d at 886, and the stop was being conducted on a side  
9 street with no foot traffic. *See Quarles*, 467 U.S. at 651. The four officer present could have easily  
10 detected and prevented any attempt to gain access to the truck.

11 Second, the officer's question did not demonstrate a concern for safety. He asked, "is there  
12 anything else in the vehicle that officer should know about," to which Gibson replied, "[e]verything in  
13 the car is mine." (ECF No. 15-1) Unlike the *Quarles* officer or the *Brady* officer, the Metro officer did  
14 not specifically ask about a weapon. The phrasing of his question shows a concern for further criminal  
15 investigation rather than public safety.

16 Third, at the time Metro officers had secured all individuals who had been in the truck. Frazier  
17 was seated in the rear of Officer Orton's patrol vehicle and Gibson stood in front of the patrol vehicle in  
18 handcuffs.

19 Based on these facts, Metro officers did not have an objectively reasonably belief that there was  
20 an immediate threat to themselves or the public. Their questioning falls outside of the public safety  
21 exception to *Miranda*. Gibson's statements subsequent to his detention should be inadmissible.

22  
23 ACCORDINGLY, and for good cause shown,  
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1 IT IS HEREBY RECOMMENDED that Gibson's motion to suppress (ECF No. 15) should be  
2 GRANTED. The handgun and any statements after Gibson was asked, "Is there anything else in the truck  
3 we should know about?" should be suppressed.

4 IT IS SO RECOMMENDED.

5 DATED this 6th day of March, 2017.

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9 CAM FERENBACH  
10 UNITED STATES MAGISTRATE JUDGE  
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